IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.E.A. No.64 of 2005
Date of decision: 03.08.2006

M/s R.S. Enterprises.

---Appellant

Vs.

Commissioner of Central Excise & another.

-----Respondent

AND

C.E.A. No.78 of 2005
Date of decision: 03.08.2006

M/s R.S. Enterprises.

---Appellant

Vs.

Commissioner of Central Excise & another.

-----Respondent

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. A.K. Sharma, Advocate
for the appellant.

Mr. Jagmohan Bansal, Advocate
for the respondents.

ORDER:

This order will dispose of C.E.A. No.64 of 2005 and C.E.A. No.78 of 2005, which arise out of the same order of the Customs, Excise and Service Tax Appellate Tribunal dated 8.10.2004.

The assessee was governed by 'Compounded Levy Scheme' under Section 3-A of the Central Excise Act, 1944 read with relevant rules i.e. Central Excise Rules, 1944 (for short, "1944 Rules"). The excise duty was determined for the furnace in question. The assessee contended that the furnace was 'batch type' and not 'pusher type'. The revenue found provisionally as well as finally that the furnace in question was 'pusher type' and higher duty was liable to be paid, while the assessee had paid

duty by treating the furnace as 'batch type' at lower rate. Accordingly, while confirming the demand of duty, the assessee was held liable to pay higher duty along with interest and penalty. The assessee had deposited the duty on 13.3.1999, while duty had become payable on 15.10.1997.

The Commissioner (Appeals), affirmed the levy of duty but reduced the amount of penalty to 50%. It was held that penalty was imposable as the assessee had failed to pay the duty in spite of there being no stay of the liability as determined. The said view has been affirmed by the Tribunal.

The revenue has filed C.E.A. No.78 of 2005 to submit that since Rule 96 ZP(3) of the 1994 Rules provides for penalty equal to the amount of duty, the assessee having delayed the payment of duty due without there being any stay, reduction of penalty to 50% was not called for.

On the other hand, the assessee has preferred C.E.A. No.64 of 2005 to contend that no penalty whatsoever should have been levied as the assessee had paid the amount of duty with interest and had no intention to evade the excise duty in as much as the assessee was raising a bona fide dispute and thus no mens rea is there.

We do not find any merit in either of the appeals.

In the judgment rendered today, we have held that provision for penalty under Rule 96 ZP(3) of the Rules was not the minimum but the maximum. Power to levy duty has to be exercised having regard to the facts and

circumstances of the case having regard to period of delay, amount involved and other circumstances.

Contention raised on behalf of the assessee that there was no element of mens rea can also not be accepted. Provision for levy of penalty has been made with a view to check delay in depositing the duty due to

discourage the assessee from not paying the duty when due. In the circumstances of the case, it cannot be held that no penalty whatsoever was attracted in absence of mens rea.

Commissioner (Appeals) and the Tribunal have concurrently exercised their discretion in imposing 50% penalty. Even if two views are possible, the view taken cannot be held to be perverse. Where discretion is exercised, interference is called for in appeal under Section 35 G of the 1994 Rules only, if the view taken by the Tribunal is perverse.

In view of above, we are unable to hold that any substantial question of law arises. Accordingly, both the appeals are dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 03, 2006
ashwani

(RAJESH BINDAL)
JUDGE